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11 **UNITED STATES BANKRUPTCY COURT**
12 **SOUTHERN DISTRICT OF NEW YORK**

13 In re:

14 RESIDENTIAL CAPITAL, LLC, et al.,

15 Debtors.

Case No.: 12-12020 (MG)

CH. 11

**HAIRSTON, ET AL. CREDITORS'
OPPOSITION TO DEBTORS'
OBJECTION TO PROOFS OF CLAIM
FILED BY CERTAIN PLAINTIFFS IN
CALIFORNIA LITIGATION**

DATE: August 28, 2013
TIME: 10:00 a.m.
ROOM.: 501

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND FACTUAL BACKGROUND**

3 On May 9, 2012, Claimants¹ filed a Civil Complaint in California State Court against Debtors herein
4 (among others), prior to their filing bankruptcy, in the litigation styled *as Hairston v. Ally et. al.* (Los
5 Angeles Superior Court Case No. BC484385, subsequently removed to federal court in the Central
6 District of California as Case No. CV12-05016). Shortly thereafter, Debtors filed the instant
7 Bankruptcy Proceedings. Prior to the claims bar date, Plaintiffs in the *Hairston v. Ally* Complaint
8 (“Claimants” herein) timely filed their Proofs of Claim as to each and every Plaintiff/Claimant. On July
9 10, 2013, Debtors Objected to Claimants’ Proofs of Claims by incorporating the *Hairston v. Ally*
10 Complaint by reference, and attacking the sufficiency of its pleadings, in a largely motion-to-dismiss
11 style filing/objection (the “Objections”). On August 9, 2013, Claimants filed with this Court (1)
12 amended Proofs of Claim together with (2) an Amended Complaint in Support of their claims (the
13 “Amended Complaint”) for each and every one of the sixty (60) Claimants.

14 As held by the authority cited below, Debtors’ pending Objections to the pre-amendment Proofs
15 of Claim are rendered moot by reason of such amendments.

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20 ¹ The Claimants are as follows:

21 Carolyn Hairston, Christine Petersen, William Mimiaga, Robin Gaston, Patrick Gaston, Mary Serrano,
22 Sarah Sebagh, Rick Albritton, Deborah Albritton, Veronica Grey, Brenda Mella, Joselito Mella, Michael
23 Man, Judy Lim, David Cruz, Yesenia Cruz, Gregory Buck, Cristina Palbicke, Khalil Subat, Manija
24 Subat, Genevie Cabang, Julio Gonzalez, Lisa Simonyi, Rick Ewald, Regina Faison, Alex Ibarra, Maria
25 Elena Del Cid, Julio Del Cid, Mesbel Mohamoud, Michael Moultrie, Willie Gilmore, Phyllis Mccrea,
26 Cecilia Chaube, Magdalena Avila, Gricelda Ruano, Elisa Jordan, Lois Terrell Sullivan, Gloria Portillo,
27 Florastene Holden, Marco Badilla, Manuela Badilla, Ignacio Rodriguez, Rosa Rodriguez, Salvador
28 Barajas, Maria Barajas, Brian Foote, Olan Ross, Evelyn Ross, Gary Johnson, Joellyn Johnson, Rodelina
Santos, Jun O. Santos, Michael Brown, Claudinette Brown, Martin Kassowitz, Shirley Kaplan, Henry
Completo, Irma Laredo, Marcia Willoughby, and Victor Pazos.

1 **II. ARGUMENT**

2 **A. Claimants Have Amended Their Proofs of Claim Thereby Mooting Debtors' Objections to the**
3 **Original Proofs of Claims**

4 Where a claimant amends its proof of claim, as here, pending objections to the original proofs of
5 claim are mooted by operation of law. (*In re Richter* (Bankr. D. Colo. 2012) 478 B.R. 30, 44
6 reconsideration denied, (Bankr. D. Colo. 2012) 481 B.R. 680 ["the Court agrees with the Trustee that the
7 Debtor's Verified Motion to Disallow Proof of Claim 9-1 is mooted by the filing of Amended Proof of
8 Claim No. 9-2 The law demands this result because Portfolio Recovery amended its claim before
9 its original claim was disallowed"]; *In re Sanchez Rodriguez* (Bankr. D.P.R., Apr. 11, 2006, 02-05947
10 SEK) 2006 WL 3898313[same]; *In re Buzek* (Bankr. N.D. Ohio 1990) 116 B.R. 82, 84 [same].

11 Debtors' pending Objections are also mooted for a second and independent reason. Though
12 labeled as an objection in form, Debtors' Objections are, in substance, a **motion to dismiss**,
13 incorporating by reference and then attacking the sufficiency of the pleadings in the *Hairston v. Ally*
14 *Complaint* – and, accordingly, should be treated as such. A motion to dismiss a complaint is mooted by
15 subsequent amendment of that complaint. (*Aqua Finance, Inc. v. Harvest King, Inc.* (W.D. Wis., Mar.
16 12, 2007) 2007 WL 5404939 *1["the filing of an amended complaint renders moot any pending motion
17 to dismiss"]; *Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952, 956 (8th Cir.2002) ["If
18 anything, Pure Country's motion to amend the complaint rendered moot Sigma Chi's motion to dismiss
19 the original complaint."]; *Lim v. Central DuPage Hosp.*, 972 F.2d 758, 762 (7th Cir.1992) [noting
20 without comment trial judge's denial of pending motion to dismiss as moot in light of amended
21 complaint]; *Standard Chlorine of Delaware, Inc. v. Sinibaldi*, 821 F.Supp. 232, 239-40 (D.Del.1992)
22 [holding that the plaintiff's filing of an amended complaint rendered the defendants' motion to dismiss
23 the original complaint moot]. Claimants here have amended their Proofs of Claim and the underlying
24 Complaint, which forms the centerpiece of Debtors' Objections, and have filed such amendments with
25 this Court. (See Amended Proofs of Claim, and Amended Complaint in Support of Proofs of Claim). No
26 compelling reason exists to merit disparate treatment of a debtor's objections that amount in substance
27 to a motion to dismiss.

1 For both of the aforementioned reasons, and guided by the jurisprudence of the authority cited
2 above, Debtors' objections to Claimants' pre-amendment Proofs of Claim are properly treated as moot.

3 Should this Court disagree and find that the Debtors' Objections remain extant despite
4 Claimants' amendment of their Proofs of Claims and the underlying Complaint in support thereof,
5 Claimants respectfully reserve their rights to oppose the substance of Debtors' Objections and do not, by
6 the filing of this Opposition, intend to waive any such arguments.

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8 DATED: August 9, 2013

Respectfully submitted,

9 **BROOKSTONE LAW, PC**

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11 By: 

12 Vito Torchia, Attorneys for Creditors
13 HAIRSTON, et al.
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IN RE RESIDENTIAL CAPITAL, LLC, et al.
United States Bankruptcy Court
Southern District of New York, Case No.: 12-12020 (MG)

PROOF OF SERVICE

I am a resident of Orange County and citizen of the United States. I am over the age of 18 years and not a party to the within action; my business address is 4000 MacArthur Blvd., Suite 1110, Newport Beach, California 92660.

On August 20, 2013, I served **HAIRSTON, ET AL. CREDITORS' OPPOSITION TO DEBTORS' OBJECTION TO PROOFS OF CLAIM FILED BY CERTAIN PLAINTIFFS IN CALIFORNIA LITIGATION**, on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope(s) addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

— **(BY MAIL)** -The envelope was mailed with postage thereon fully prepaid. I am "readily" familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

— **(BY OVERNIGHT COURIER SERVICE)** - I caused such envelope to be delivered by overnight courier service to the offices of the addressee. The envelope was deposited in or with a facility regularly maintained by the overnight courier service with delivery fees paid or provided for.

— **(BY PERSONAL SERVICE)** - I delivered such envelope by hand to the address of the addressee listed above.

— **(BY ELECTRONIC SERVICE)** – I emailed the documents to the people at the electronic notification addresses listed above.

— **(BY FAX TRANSMISSION)** - I faxed the documents to the person at the fax number listed above . No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out is attached.

XX **(CM/ECF)** - I caused the above document(s) to be transmitted to the office(s) of the addressee(s) listed above by electronic mail at the e-mail address(es) set forth above pursuant to Fed.R.Civ.P.5(b)(2)(E). "A Notice of Electronic Filing (NEF)

IN RE RESIDENTIAL CAPITAL, LLC, et al.

United States Bankruptcy Court


Southern District of New York, Case No.: 12-12020 (MG)

1 is generated automatically by the ECF system upon completion of an electronic
2 filing.

3 XX **(FEDERAL)** - I declare that I am employed in the office of a member of the bar
4 of this Court at whose discretion the service was made.

5 I declare under penalty of perjury under the laws of the United States and the
6 State of California that the foregoing is true and correct.

7 Executed on August 20, 2013 in Newport Beach, California.

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11 Francesca M. Canale
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IN RE RESIDENTIAL CAPITAL, LLC, et al.
United States Bankruptcy Court
Southern District of New York, Case No.: 12-12020 (MG)
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IN RE RESIDENTIAL CAPITAL, LLC, et al.

United States Bankruptcy Court

Southern District of New York, Case No.: 12-12020 (MG)

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